

AMENDED IN SENATE MAY 29, 1996
AMENDED IN SENATE APRIL 30, 1996
AMENDED IN SENATE APRIL 11, 1996

SENATE BILL

No. 1910

Introduced by Senators Johannessen and Haynes
(Coauthors: Assembly Members Baldwin, Bowen, Harvey,
House, Margett, and Richter)

February 23, 1996

An act to amend ~~Section 1021.5 of the Code of Civil Procedure, and to amend Sections 10248 and 11343.4 of, and to add Section 11350.1 to, Sections 10248 and 11343.4 of the~~ Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1910, as amended, Johannessen. Administrative regulations.

~~(1) The Administrative Procedure Act contains provisions relating to the adoption, review, and approval of regulations adopted by state agencies in accordance with statutory mandates. The act provides that a regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the 30th day after the date of filing unless certain conditions exist.~~

~~This bill would exclude regulations adopted under certain provisions relating to the hunting of resident or migratory game birds from the requirement that the regulation becomes effective on the 30th day after filing, and would prohibit enforcement of any regulation filed with the~~

~~Secretary of State, notwithstanding the above provision, unless the regulation has been made available to the public for 30 days, as specified.~~

~~(2) The act also provides that a regulation may be declared to be invalid if certain conditions exist.~~

~~This bill would require that a regulation be declared invalid and unenforceable against an individual if the regulation is not made available to the public for 30 days or if an agency fails to mail a written copy of new regulations to an individual who would be affected by the regulation within 10 days after receipt of any written or oral request for these copies by the individual. It would additionally provide that if a request for a copy of a regulation is made in person, the regulation shall be unenforceable against the requesting person until the person is provided with a copy. It would also provide that if a regulation is declared invalid because of a substantive failure to comply with the 30-day availability or 10-day mailing requirement, the adopting agency would not be required to reinitiate adoption, review, and approval procedures for that regulation in accordance with the act, but instead the regulation would be deemed valid and enforceable upon the agency's compliance with the availability or mailing requirements.~~

~~(3) Existing~~

~~*The Administrative Procedure Act requires the Office of Administrative Law to perform various functions and duties with respect to the adoption, review, and approval of administrative regulations. Existing law also requires the Legislative Counsel to make specified information available to the public by means of a public computer network.*~~

~~This bill would require the Office of Administrative Law to submit both a paper copy and a computer diskette containing the text of new or amended regulations to the Legislative Counsel when new or amended regulations are filed with the Secretary of State, and would require the Legislative Counsel to make available, within a reasonable period of time, by means of the public computer network, all new or amended regulations adopted on or after January 1, 1997, received from the office, and by June 1, 1999, all regulations contained in the California Code of Regulations. The bill would provide that~~

regulations made available by the Legislative Counsel by means of the public computer network between January 1, 1997, and April 1, 1998, shall constitute an unofficial version of the California Code of Regulations, and would declare the intent of the Legislature with respect to the availability of the official version of the California Code of Regulations in light of the existence of a contract entered into by the Office of Administrative Law. It would also require that the diskette be prepared in a specified format by the agency proposing to adopt the new regulations and be submitted by the agency to the office at the same time the agency submits the adopted regulation, the rulemaking file, or a complete copy of the rulemaking file, to the office for review.

~~(4) Existing law permits a court, upon motion, to award attorneys' fees to a successful party against one or more opposing parties in any action that has resulted in the enforcement of an important right affecting the public interest if certain conditions are met.~~

~~This bill would specify that, for purposes of these provisions, "an important right affecting the public interest" includes, but is not limited to, the right to public availability of regulations.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1021.5 of the Code of Civil~~
2 ~~Procedure is amended to read:~~

3 ~~1021.5. (a) Upon motion, a court may award~~
4 ~~attorneys' fees to a successful party against one or more~~
5 ~~opposing parties in any action that has resulted in the~~
6 ~~enforcement of an important right affecting the public~~
7 ~~interest if all of the following conditions are met:~~

8 ~~(1) A significant benefit, whether pecuniary or~~
9 ~~nonpecuniary, has been conferred on the general public~~
10 ~~or a large class of persons.~~

11 ~~(2) The necessity and financial burden of private~~
12 ~~enforcement, or of enforcement by one public entity~~

~~1 against another public entity, are such as to make the
2 award appropriate.~~

~~3 (3) These fees should not in the interest of justice be
4 paid out of the recovery, if any.~~

~~5 With respect to actions involving public entities, this
6 section applies to allowances against, but not in favor of,
7 public entities, and no claim shall be required to be filed
8 therefor, unless one or more successful parties and one or
9 more opposing parties are public entities, in which case
10 no claim shall be required to be filed therefor under Part
11 3 (commencing with Section 900) of Division 3.6 of Title
12 1 of the Government Code.~~

~~13 (b) Attorneys' fees awarded to a public entity
14 pursuant to this section shall not be increased or
15 decreased by a multiplier based upon extrinsic
16 circumstances, as discussed in Serrano v. Priest, 20 Cal. 3d
17 25, 49.~~

~~18 (e) For purposes of this section, "an important right
19 affecting the public interest" includes, but is not limited
20 to, the right to public availability of regulations as
21 required by subdivision (b) of Section 11343.4 of the
22 Government Code.~~

~~23 SEC. 2.—~~

~~24 SECTION 1. Section 10248 of the Government Code
25 is amended to read:~~

~~26 10248. (a) The Legislative Counsel, with the advice
27 of the Assembly Committee on Rules and the Senate
28 Committee on Rules, shall make all of the following
29 information available to the public in electronic form:~~

~~30 (1) The legislative calendar, the schedule of legislative
31 committee hearings, a list of matters pending on the
32 floors of both houses of the Legislature, and a list of the
33 committees of the Legislature and their members.~~

~~34 (2) The text of each bill introduced in each current
35 legislative session, including each amended, enrolled, and
36 chaptered form of each bill.~~

~~37 (3) The bill history of each bill introduced and
38 amended in each current legislative session.~~

~~39 (4) The bill status of each bill introduced and amended
40 in each current legislative session.~~

1 (5) All bill analyses prepared by legislative
2 committees in connection with each bill in each current
3 legislative session.

4 (6) All vote information concerning each bill in each
5 current legislative session.

6 (7) Any veto message concerning a bill in each current
7 legislative session.

8 (8) The California Codes.

9 (9) The California Constitution.

10 (10) All statutes enacted on or after January 1, 1993.

11 (11) The California Code of Regulations.

12 (b) The information identified in subdivision (a) shall
13 be made available to the public by means of access by way
14 of the largest nonproprietary, nonprofit cooperative
15 public computer network. The information shall be made
16 available in one or more formats and by one or more
17 means in order to provide the greatest feasible access to
18 the general public in this state. Any person who accesses
19 the information may access all or any part of the
20 information. The information may also be made available
21 by any other means of access that would facilitate public
22 access to the information. The information that is
23 maintained in the legislative information system that is
24 operated and maintained by the Legislative Counsel shall
25 be made available in the shortest feasible time after the
26 information is available in the information system. The
27 information that is not maintained in the information
28 system shall be made available in the shortest feasible
29 time after it is available to the Legislative Counsel.

30 (c) Any documentation that describes the electronic
31 digital formats of the information identified in
32 subdivision (a) and is available to the public shall be made
33 available by means of access by way of the computer
34 network specified in subdivision (b).

35 (d) Personal information concerning a person who
36 accesses the information may be maintained only for the
37 purpose of providing service to the person.

38 (e) No fee or other charge may be imposed by the
39 Legislative Counsel as a condition of accessing the

1 information that is accessible by way of the computer
2 network specified in subdivision (b).

3 (f) The electronic public access provided by way of the
4 computer network specified in subdivision (b) shall be in
5 addition to other electronic or print distribution of the
6 information.

7 (g) No action taken pursuant to this section shall be
8 deemed to alter or relinquish any copyright or other
9 proprietary interest or entitlement of the State of
10 California relating to any of the information made
11 available pursuant to this section.

12 (h) Availability of a regulation by means of the public
13 computer network is not a condition precedent to
14 enforceability of the regulation.

15 ~~SEC. 3. Section 11343.4 of the Government Code is~~
16 ~~amended to read:~~

17 ~~11343.4. (a) A regulation or an order of repeal~~
18 ~~required to be filed with the Secretary of State shall~~
19 ~~become effective on the 30th day after the date of filing~~
20 ~~unless:~~

21 ~~(1) Otherwise specifically provided by the statute~~
22 ~~pursuant to which the regulation or order of repeal was~~
23 ~~adopted, in which event it becomes effective on the day~~
24 ~~prescribed by this statute.~~

25 ~~(2) It is a regulation adopted under Section 8054 or~~
26 ~~3373 of the Financial Code, in which event it shall become~~
27 ~~effective upon filing or upon any later date specified by~~
28 ~~the state agency in a written instrument filed with, or as~~
29 ~~part of, the regulation or order of repeal.~~

30 ~~(3) A later date is prescribed by the state agency in a~~
31 ~~written instrument filed with, or as part of, the regulation~~
32 ~~or order of repeal.~~

33 ~~(4) It is a regulation adopted under Sections 200 and~~
34 ~~355 of the Fish and Game Code relating to the hunting of~~
35 ~~resident or migratory game birds, in which event it shall~~
36 ~~be effective upon filing or upon any later date specified~~
37 ~~by the state agency in a written instrument filed with, or~~
38 ~~as part of, the regulation or order of repeal.~~

39 ~~(b) (1) Notwithstanding subdivision (a), no~~
40 ~~regulation filed with the Secretary of State is subject to~~

1 enforcement unless the regulation has been made
2 available to the public for 30 days. For purposes of this
3 subdivision, a regulation has been made available to the
4 public if both of the following conditions exist:

5 (A) The agency has developed and implemented
6 procedures that ensure that written copies of new
7 regulations are mailed within 10 days after receipt of an
8 oral or written request.

9 (B) A reasonable number of copies of new regulations
10 are available at all agency offices open to the public for
11 distribution to individuals who request the text of new
12 regulations in person. An agency shall make copies of new
13 regulations available to the public free of charge or at the
14 same rate that the agency customarily provides other
15 written information of similar length to the public.

16 (2) This subdivision shall not apply to emergency
17 regulations or regulations under the Revenue and
18 Taxation Code.

19 (c) (1) The office shall submit both a paper copy and
20 a computer diskette containing the text of new or
21 amended regulations to the Legislative Counsel when
22 new or amended regulations are filed with the Secretary
23 of State pursuant to this section. The diskette shall be
24 prepared by the agency proposing to adopt the new
25 regulations and shall be submitted by the agency to the
26 office at the same time the agency submits the adopted
27 regulation, the rulemaking file, or a complete copy of the
28 rulemaking file, to the office for review pursuant to
29 subdivision (b) of Section 11347.3. If any alteration is
30 made to the text of the regulation after the rulemaking
31 file is submitted to the office, the agency proposing to
32 adopt the new regulation shall enter these changes onto
33 the diskette and return the diskette to the office within
34 five days of the date that the regulation was filed with the
35 Secretary of State.

36 (2) When an agency proposing to amend an existing
37 regulation submits a diskette to the office in accordance
38 with paragraph (1), the entire text of the regulation shall
39 be set out and any new matter shall be underlined and
40 any matter to be omitted shall be in type bearing a

1 horizontal line through the center and commonly known
2 as “strikeout” type.

3 SEC. 4. Section 11350.1 is added to the Government
4 Code, to read:

5 11350.1. (a) In addition to any other ground that may
6 exist, a regulation shall be declared invalid and
7 unenforceable against an individual if either of the
8 following events occur:

9 (1) The regulation is not made available to the public
10 pursuant to subdivision (b) of Section 11343.4.

11 (2) An agency fails to mail a written copy of new
12 regulations to an individual who would be affected by the
13 regulation within 10 days after receipt of any written or
14 oral request to do so by that individual pursuant to
15 subdivision (b) of Section 11343.4.

16 (b) The regulation shall be deemed valid and
17 enforceable with respect to an individual upon the
18 agency’s compliance with the 30-day availability
19 requirement, or the 10-day mailing requirement
20 specified in subdivision (b) of Section 11343.4. However,
21 if an agency fails to provide a copy of a regulation to an
22 individual who requested it in person, that regulation
23 shall be unenforceable against that individual until the
24 individual is provided with a copy.

25 (c) If a regulation has been declared invalid and
26 unenforceable because of failure to comply with
27 subdivision (b) of Section 11343.4, the adopting agency
28 shall not be required to reinstate adoption, review, and
29 approval procedures for that regulation in accordance
30 with this chapter.

31 SEC. 5.—

32 SEC. 2. Section 11343.4 of the Government Code is
33 amended to read:

34 11343.4. (a) A regulation or an order of repeal
35 required to be filed with the Secretary of State shall
36 become effective on the 30th day after the date of filing
37 unless:

38 (a) —

39 (1) Otherwise specifically provided by the statute
40 pursuant to which the regulation or order of repeal was

1 adopted, in which event it becomes effective on the day
2 prescribed by this statute.

3 ~~(b)~~

4 (2) It is a regulation adopted under Section 8054 or
5 3373 of the Financial Code, in which event it shall become
6 effective upon filing or upon any later date specified by
7 the state agency in a written instrument filed with, or as
8 part of, the regulation or order of repeal.

9 ~~(c)~~

10 (3) A later date is prescribed by the state agency in a
11 written instrument filed with, or as part of, the regulation
12 or order of repeal.

13 ~~(d)~~

14 (4) The agency makes a written request to the office
15 demonstrating good cause for an earlier effective date, in
16 which case the office may prescribe an earlier date.

17 *(b) (1) The office shall submit both a paper copy and*
18 *a computer diskette containing the text of new or*
19 *amended regulations to the Legislative Counsel when*
20 *new or amended regulations are filed with the Secretary*
21 *of State pursuant to this section. The diskette shall be*
22 *prepared by the agency proposing to adopt the new*
23 *regulations and shall be submitted by the agency to the*
24 *office at the same time the agency submits the adopted*
25 *regulation, the rulemaking file, or a complete copy of the*
26 *rulemaking file, to the office for review pursuant to*
27 *subdivision (b) of Section 11347.3. If any alteration is*
28 *made to the text of the regulation after the rulemaking*
29 *file is submitted to the office, the agency proposing to*
30 *adopt the new regulation shall enter these changes onto*
31 *the diskette and return the diskette to the office within*
32 *five days of the date that the regulation was filed with the*
33 *Secretary of State.*

34 *(2) When an agency proposing to amend an existing*
35 *regulation submits a diskette to the office in accordance*
36 *with paragraph (1), the entire text of the regulation shall*
37 *be set out and any new matter shall be underlined and*
38 *any matter to be omitted shall be in type bearing a*
39 *horizontal line through the center and commonly known*
40 *as "strikeout" type.*

1 SEC. 3. (a) The Legislative Counsel shall make
2 available, within a reasonable period of time, by means of
3 the public computer network specified in subdivision (b)
4 of Section 10248 of the Government Code, all new or
5 amended regulations received from the Office of
6 Administrative Law pursuant to subdivision ~~(e)~~ (b) of
7 Section 11343.4 of the Government Code adopted on or
8 after January 1, 1997.

9 (b) In order to comply with paragraph (11) of
10 subdivision (a) of Section 10248 of the Government Code
11 in an expeditious manner, the Legislative Counsel shall
12 have until June 1, 1999, to make the entire California
13 Code of Regulations available to the public in electronic
14 form.

15 (c) Regulations made available by the Legislative
16 Counsel by means of the public computer network
17 between January 1, 1997, and April 1, 1998, shall constitute
18 an unofficial version of the California Code of Regulations
19 and, when appearing on the computer network, shall
20 contain a statement to that effect. It is the intent of the
21 Legislature to make unofficial regulations available to the
22 public electronically through a public computer network.
23 In deference to the contract between the Office of
24 Administrative Law and Bancroft Whitney authorizing
25 Bancroft Whitney to be the exclusive publisher of the
26 official California Code of Regulations until April 1, 1998,
27 the Legislative Counsel shall not make available the
28 official version of the California Code of Regulations until
29 the expiration of that contract. However, after this date,
30 it is the intent of the Legislature to make the official
31 version of the California Code of Regulations
32 electronically available to the public.

